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BY ECF

The Honorable Lorna G. Schofield
United States District Judge
United States District Court for the Southern District of New York
40 Foley Square
New York, New York 10007

Re: Dr. Carmody v. New York Univ., et al., 21-CV-8186 (LGS-VF)

Dear Judge Schofield:

On behalf of the NYU Defendants, Dr. Robert Femia and Dr. Robert Grossman, we respectfully submit this letter to request that the Court adjourn the start of the jury trial until a date after March 18, 2024, to which plaintiff's counsel consents, with as much certainty as feasible and that the Court revise the Scheduling Order to provide for the filing of *in limine* motions after the parties submit the Joint Final Pretrial Order ("JPTO"), to which plaintiff's counsel does not consent.

The Court has set a trial ready date of February 26, 2024. Defendants respectfully request that the Court adjourn that date until no earlier than Monday, March 18, 2024. Plaintiff's counsel, Damian Cavaleri, consents to this request. The reason for this request is that the undersigned counsel has a JAMS arbitration hearing before Retired Magistrate Judge James Francis IV from March 6 through 8, 2024, which has been scheduled since May 24, 2023. Because it was difficult to schedule that arbitration even for March 2024, it would be a hardship and unfair to my client in that case to move the arbitration, which likely would not be scheduled again for many months thereafter.

In addition, the Defendants respectfully submit that, to the extent feasible, the Court provide the parties with a date certain for the jury trial, given that the individual defendants have important and on-going responsibilities for healthcare at NYU and need to have some certainty with their schedules (especially given that this trial is likely to last approximately two weeks), with Dr. Femia being responsible for the entire operations of the Department of Emergency Medicine and Dr. Grossman as the CEO responsible for leading all of NYU Langone's expansive healthcare operations. In addition, many of the Defendants' witnesses are practicing physicians, who need to have some predictability with their clinical schedules and responsibilities for patient care. Plaintiff does not object to this request.

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Under the Court's Scheduling Order, (Dkt. No. 163), the parties are to submit *in limine* motions on October 10, 2023, and their JPTO on November 10, 2023. Defendants respectfully request that the Court move the date for filing *in limine* motions to November 20, 2023, *after* the parties have submitted the JPTO. Plaintiff does not consent to this request. Defendants respectfully submit that filing *in limine* motions after the JPTO will give the Defendants (and plaintiff) the opportunity to understand the evidence that each side seeks to submit at trial and, if possible, seek to resolve evidentiary disputes before filing *in limine* motions. This sequencing also will take guesswork out of anticipating plaintiff's evidence and damage claims before seeing it in the draft JPTO, and will eliminate the need to seek relief from the Court to file additional *in limine* motions that Defendants did not anticipate before seeing plaintiff's portion of the JPTO. We also note that, if the Court adjourns the trial date, switching the order for submitting *in limine* motions will not cause any delay in the resolution of those motions or the start of trial.

For these reasons, the Defendants respectfully request that the Court adjourn the trial date with as much certainty as feasible and change the sequence for submitting *in limine* motions until after the parties file the JPTO. We thank Your Honor in advance for considering these requests.

Respectfully submitted,

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cc: All Counsel of Record (By ECF)